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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 UniCredit Bank Austria AG,

10 Plaintiff,

11 v.

12 Inmobiliaria y Arrendadora Cuadro S.A. de
13 C.V., et al.,

14 Defendantss.

No. CV-23-01991-PHX-KML

ORDER

15 Plaintiff UniCredit Bank Austria AG provided Defendant Inmobiliaria y
16 Arrendadora Cuadro S.A. de C.V (“IyAC”) with a multi-million-dollar dual tranche loan
17 to purchase plastic manufacturing equipment. UniCredit denied IyAC’s request for the
18 second tranche after IyAC failed to make payments on the first, resulting in IyAC’s default
19 on multiple other agreements contingent on IyAC securing financing. IyAC initiated
20 arbitration against UniCredit, but the arbitrator ruled against IyAC and awarded damages
21 to UniCredit. In this suit, UniCredit attempts to confirm the arbitration award against IyAC
22 and asserts claims against other entities and individuals allegedly involved with IyAC.
23 Some of UniCredit’s claims, against some of defendants, are sufficient to proceed beyond
24 the pleading stage, so defendants’ motions to dismiss are denied in part.

25 **I. Background**

26 IyAC is a family-run plastic film manufacturing company operated by Amalia
27 Cecilia Luna Contreras (“Luna Contreras”) and her son Miguel Angel Peredo Luna
28 (“Peredo Luna”). (Doc. 29 at 2, 4.) IyAC is a Mexican company with assets and operations

1 in Arizona. (Doc. 29 at 2.)

2 In 2016, IyAC started negotiating a loan (the “Credit Agreement”) with UniCredit,
3 an Austrian bank. (Doc. 29 at 1, 7.) Under the Credit Agreement, UniCredit would make
4 two loans available to IyAC: one in the amount of €3,351,600 (“Facility A”) and another
5 in the amount of €3,145,500 (“Facility B”). (Doc. 29 at 11.) This financing would be used
6 to purchase plastic extrusion equipment from SML Maschinenbaugesellschaft mbH
7 (“SML”). (Doc. 29 at 4, 7.) The equipment would be delivered to Zummit, a Nevada
8 corporation that Luna Contreras and Peredo Luna represented was IyAC’s “100%-owned
9 subsidiary.” (Doc. 29 at 6–8.) The Credit Agreement provided any dispute “arising out of
10 or in connection” with the transaction would be subject to arbitration by Austria’s Vienna
11 International Arbitral Centre under its Rules of Arbitration and Conciliation. (Doc. 29
12 at 15.)

13 **A. Material Misrepresentations**

14 UniCredit alleges that IyAC, Zummit, and Peredo Luna made false statements and
15 omissions during negotiations that were intended to induce UniCredit to enter into the
16 Credit Agreement. (Doc. 29 at 8–10.) Many of the false statements and omissions involved
17 the relationship between various organizations. For example, “IyAC, Zummit and Mr.
18 Peredo Luna each provided [UniCredit] with entity organization charts showing, among
19 other things, IyAC to have a 100% ownership interest in Zummit.” (Doc. 29 at 8.) Luna
20 Contreras signed “all but one of these entity organization charts[.]” (Doc. 29 at 8.) One of
21 the charts provided by Peredo Luna and signed by Luna Contreras displayed “Inmobiliaria
22 y Arrendadora **Grupo**, Mexico” (IyAG) as the “100%” owner of Zummit. (Doc. 29 at 8–9
23 (emphasis added).) Other documents identified IyAC, *i.e.* Inmobiliaria y Arrendadora
24 **Cuadro**, as the owner. UniCredit asked Peredo Luna about this discrepancy and he stated,
25 IyAG “is ‘like our dba (Comercial [sic] name).’” (Doc. 29 at 9.) UniCredit later discovered
26 that “Zummit’s annual filings with the State of Arizona for 2017, 2018 and 2019 state that
27 ‘Fruma Plastics’ was Zummit’s shareholder.” (Doc. 29 at 9.)

28 IyAC and Peredo Luna also provided UniCredit with IyAC’s 2015, 2016, and 2017

1 audited financial statements. (Doc. 29 at 10.) These statements too “were for ‘Inmobiliaria
2 y Arrendadora Grupo’ but per Mr. Peredo Luna’s assertion, and as confirmed by the auditor
3 who prepared the statements, this was understood by [UniCredit] to be a dba for, and refer
4 to, IyAC.” (Doc. 29 at 10.) UniCredit alleges these statements were materially false
5 because they failed to disclose two pending litigation claims against IyAC, including one
6 reduced to judgment in 2017. (Doc. 29 at 10.) IyAC also represented there were “no
7 security interests on its assets” when its real estate was in fact subject to two large
8 mortgages. (Doc. 29 at 10.) UniCredit relied on the statements and entered into the Credit
9 Agreement. (Doc. 29 at 3.)

10 **B. The Joint Venture Agreement**

11 Shortly before entering the Credit Agreement, IyAC and Zummit entered into a Joint
12 Venture Agreement (the “JVA”) with one another. (Doc. 29 at 12.) Peredo Luna signed on
13 Zummit’s behalf and another individual acting on Peredo Luna’s instructions signed on
14 IyAC’s behalf. (Doc. 29 at 12.) Under the JVA, IyAC would “contribute the SML
15 Equipment” to the joint venture and Zummit would “obtain a real estate facility in Arizona
16 for the SML Equipment.” (Doc. 29 at 12.) The parties agreed Zummit would receive 70%
17 of the venture’s profits and IyAC would receive 30%. (Doc. 29 at 12.) The JVA provided
18 that in the event of a breach—which it did not define—the breaching party would pay the
19 other party a \$5 million penalty. (Doc. 29 at 12.) The JVA also contained a strange
20 provision requiring that IyAC collaterally assign to Zummit 1,000,000 shares in Zummit
21 as a form of security if IyAC breached the JVA. (Doc. 29 at 12.) “Zummit’s Articles of
22 Incorporation authorized the issuance of 1,000,000 shares, and therefore, the collateral
23 pledge was for 100% of Zummit.” (Doc. 29 at 12.) In other words, if IyAC breached the
24 JVA, Zummit could execute on the collateral and own 100% of itself. (Doc. 29 at 12.)

25 In November 2019, approximately two years after the Credit Agreement, Zummit
26 issued IyAC a default letter for “fail[ure] to provide evidence” of acquiring the SML
27 Equipment under the JVA. (Doc. 29 at 13.) That letter demanded the \$5 million penalty
28 and notified IyAC that Zummit would “keep possession and ownership of the shares title

1 certificate pledged since the joint venture contract was signed . . .’ (*i.e.*, the 1,000,000
2 shares of Zummit pledged to Zummit by IyAC).” (Doc. 29 at 13.)

3 **C. Private Purchase Agreement**

4 After the Credit Agreement but before Zummit sent the default letter, IyAC entered
5 into a Private Purchase Agreement (the “PPA”) with Empaques Poliplasticos S.A. de C.V.
6 (“Empaques”). (Doc. 29 at 13.) Under the PPA, IyAC would sell and Empaques would buy
7 “30 million pounds of plastic wrap per year at a price of \$1 per pound for five years,
8 beginning in 2021.” (Doc. 29 at 13.) In the event of a breach—a term the PPA did not
9 define—the breaching party would pay a penalty of \$30 million. (Doc. 29 at 13–14.)
10 UniCredit was not aware of the PPA until IyAC filed its arbitration claim. (Doc. 29 at 13.)

11 **D. Facility A Default and Arbitration**

12 After UniCredit disbursed the Facility A loan to IyAC, the SML Equipment was
13 delivered to Zummit. (Doc. 29 at 14.) IyAC failed to timely make the first installment
14 payment due under the Credit Agreement. (Doc. 29 at 14.) Nonetheless, IyAC requested
15 Facility B funding and provided 2017 and 2018 financial statements to UniCredit as
16 required under the Credit Agreement. (Doc. 29 at 14.) These statements “omitted any
17 reference to IyAC’s debt to [UniCredit] of approximately €3,351,600” and “IyAC and its
18 auditor could not provide a credible explanation for this omission.” (Doc. 29 at 14.)
19 Because of this and IyAC’s attempts to “change what SML Equipment it could purchase
20 under Facility B,” UniCredit advised IyAC it would not make the Facility B loan available.
21 (Doc. 29 at 14–15.)

22 Because UniCredit refused to make the Facility B loan, IyAC claimed it could not
23 fulfill its obligations to Empaques under the PPA. (Doc. 29 at 14.) Empaques then issued
24 a default letter stating IyAC had breached the PPA and demanding payment of the \$30
25 million penalty. (Doc. 29 at 14.)

26 As a result, IyAC filed a statement of claim with the Vienna Arbitral Center
27 claiming UniCredit breached the Credit Agreement and demanding €41,858,900.00 in
28 damages. (Doc. 29 at 16.) UniCredit asserted a counterclaim for €3,037,823.24 plus

1 interest, representing the amounts IyAC had failed to pay under the Credit Agreement.
2 (Doc. 29 at 16.)

3 On March 8, 2021, the arbitrator issued a final award in favor of UniCredit
4 dismissing IyAC's claims and determining that IyAC was "liable to pay the amount of
5 €3,075,192.72 to Plaintiff within 14 days after service of the award" with interest and
6 €890,161.08 "for fees, expenses and costs related to the arbitration." (Doc. 29 at 17.)

7 **E. IyAC Vacates its Facility**

8 UniCredit brought an action against IyAC in Mexico. (Doc. 29 at 18.) On June 16,
9 2021, UniCredit's Mexican counsel attempted to effect service of process on IyAC at its
10 facility in Mexico but discovered that IyAC had vacated it, "leaving no equipment and no
11 forwarding address." (Doc. 29 at 18.) UniCredit alleges that discovery was the first time it
12 had reason to think IyAC may have defrauded it. (Doc. 29 at 18.)

13 UniCredit subsequently investigated Peredo Luna and his associated entities and
14 discovered "a long history of defrauding creditors using a similar 'shell game' *modus*
15 *operandi*" that he used against UniCredit. (Doc. 29 at 18.) Peredo Luna "arranges for
16 entities of which he has de facto control" to acquire plastic-making equipment and material,
17 financed by loans; defaults on those loans after maxing out credit lines on the purchases;
18 sends or transfers the purchased assets to another entity under his control; and then goes
19 out of existence, "leaving no assets out of which the creditors can recover." (Doc. 29 at 18.)
20 UniCredit alleges Peredo Luna followed a similar pattern of conduct with at least three
21 other banks, with entities he controlled either disappearing or transferring their assets
22 before filing for bankruptcy when the banks sought to collect. (Doc. 29 at 19–21.)

23 **F. UniCredit Files Suit**

24 In September 2023, UniCredit filed its complaint in this court against IyAC,
25 Zummit, Peredo Luna, Maria de Los Angeles Luna Gale ("Luna Gale"), Luna Contreras,
26 and Miguel A. Peredo ("Peredo").¹ (Doc. 1.) The complaint listed six counts. Two months

27 ¹ The complaint names as defendants the spouses of Luna Contreras (Peredo) and Peredo
28 Luna (Luna Gale). UniCredit does not allege any specific facts relating to those spouses
except for the existence of their marriages. (Doc. 29 at 2.) The marital community "is not
a legal entity and cannot itself be sued." *Sw. Foodservice Excellence Inc. v. Strub*, No. CV-

1 later, UniCredit filed an amended complaint alleging additional facts in support of these
 2 claims. (Doc. 29.) UniCredit was unable to serve IyAC, Luna Contreras, and Peredo
 3 through normal means and sought permission to complete alternative service. (Doc. 36.)
 4 The court approved alternative service and UniCredit served those three defendants via
 5 certified mail. (Doc. 40 at 4.) In December 2023, defendants Zummit, Peredo Luna, and
 6 Luna Gale filed a motion to dismiss. (Doc. 37.) In February 2024, Zummit notified the
 7 court it had filed for bankruptcy. (Doc. 52.) A few days later, Luna Contreras and Peredo
 8 filed a motion to dismiss. (Doc. 54.) IyAC filed its own motion to dismiss shortly after.
 9 (Doc. 55.)

10 Zummit's bankruptcy automatically stayed all counts against it. 11 U.S.C. § 362(a).
 11 Thus, assuming they are properly viewed as standalone counts, the counts brought only
 12 against Zummit (*i.e.*, counts three and five) are stayed. The bankruptcy stay did not,
 13 however, automatically reach any of the other defendants. *Klinkenborg Aerial Spraying &*
 14 *Seeding, Inc. v. Rotorcraft Dev. Corp.*, 690 F. App'x 540, 540–41 (9th Cir. 2017). The
 15 counts not subject to the bankruptcy stay are:

- 16 • Count 1: recognition of the Austrian arbitral award against IyAC (based on Zummit
- 17 allegedly being IyAC's successor);
- 18 • Count II: fraud against IyAC, Zummit, Peredo Luna, and Luna Contreras for
- 19 material misrepresentations and omissions during the parties' negotiations of the
- 20 Credit Agreement;
- 21 • Count IV: piercing the corporate veil—alter ego against all defendants, based on
- 22 IyAC being a “mere instrumentality” of Peredo Luna, Luna Contreras, and Zummit
- 23 (Doc. 29 at 28);
- 24 • Count VI: fraudulent transfer under the Arizona Uniform Fraudulent Transfer Act

25 19-05063-PHX-SRB, 2020 WL 6323823 (D. Ariz. May 4, 2020). However, “[u]nder
 26 Arizona law, spouses must be sued jointly in order to reach assets of community property.”
 27 *R. Prasad Indus. v. Flat Irons Envt'l. Sols. Corp.*, No. CV 12-8261-PCT-JAT, 2013 WL
 28 2217831, at *5 (D. Ariz. May 20, 2013) (citing A.R.S. § 25–215(D); *Spudnuts, Inc. v. Lane*,
 676 P.2d 669, 670 (Ariz. Ct. App. 1984). There are no substantive claims asserted against
 the spouses but “the Court understands that [the spouses are] named solely for purposes of
 collecting any potential judgment from the marital community.” *Greenburg v. Wray*,
 No. CV-22-00122-PHX-DLR, 2022 WL 2176499, at *3 (D. Ariz. June 16, 2022).

1 against Peredo Luna, and Luna Contreras.
 2 (Doc. 29 at 21–31.) This listing of the non-stayed counts is not entirely accurate. The
 3 Arizona Supreme Court recently clarified that “an attempt to pierce the corporate veil is
 4 not itself a cause of action but is raised in the context of another cause of action such as
 5 ones based on contract or tort.” *Specialty Companies Grp., LLC v. Meritage Homes of*
 6 *Arizona, Inc.*, 492 P.3d 308, 310 (Ariz. 2021). Therefore, Count IV is not a standalone
 7 claim but merely an allegation that Peredo Luna, Luna Gale, Luna Contreras, Peredo, and
 8 Zummit should “be liable for the actions and debts of IyAC, including but not limited to
 9 the amounts owing [sic] under the Arbitration Award.” (Doc. 29 at 29.)

10 **II. Jurisdiction**

11 Each of the three motions to dismiss presents a variety of jurisdictional arguments.
 12 There is “no mandatory sequencing of jurisdictional issues” and a court may assess
 13 jurisdictional issues in the order it deems reasonable. *Sinochem Int’l Co. v. Malaysia Int’l*
 14 *Shipping Corp.*, 549 U.S. 422, 431 (2007). The court begins with challenges to service of
 15 process, then analyzes personal jurisdiction and finally subject matter jurisdiction.

16 **A. Lack of Personal Jurisdiction due to Improper Service of Process**

17 IyAC, Luna Contreras, and Peredo argue the complaint must be dismissed under
 18 Rule 12(b)(5) because UniCredit did not serve them properly. (Doc. 54 at 6–8; Doc. 55
 19 at 4–5.) “A federal court is without personal jurisdiction over a defendant unless the
 20 defendant has been served in accordance with Fed. R. Civ. P. 4.” *Travelers Cas. & Sur.*
 21 *Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) (internal citation omitted).
 22 The serving party bears the burden of establishing the validity of service. *Brockmeyer v.*
 23 *May*, 383 F.3d 798, 801 (9th Cir. 2004). Because IyAC, Luna Contreras, and Peredo were
 24 properly served under Arizona law, their Rule 12(b)(5) motions are denied.

25 “A federal court does not have jurisdiction over a defendant unless the defendant
 26 has been served properly under Fed. R. Civ. P. 4.” *Direct Mail Specialists, Inc. v. Eclat*
 27 *Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988). Rule 4(e)(1) permits service
 28 by following state law “where the district court is located or where service is made[.]” Fed.

1 R. Civ. P. 4(e)(1). In Arizona, if a party shows that service by ordinary means is
 2 impracticable, the court may allow service by another manner. Ariz. R. Civ. P. 4.1(k)(1).

3 UniCredit attempted service on Luna Contreras, Peredo, and IyAC (through its 99%
 4 shareholder, Luna Contreras) by sending a process server to the Scottsdale address Luna
 5 Contreras identified as her own on the 2022 Annual Report that Zummit filed with the
 6 Arizona Corporation Commission. (Doc. 36 at 2.) The process server reported that the
 7 person who answered at this address stated, “no one [was] living here by that name” and
 8 “[m]ail has been received for them, but the Defendant is unknown.” (Doc. 36 at 2.)
 9 UniCredit also identified a Paradise Valley address as Luna Contreras and Peredo’s
 10 through a public records search and attempted to serve defendants there, but the person
 11 who answered at this address stated “Amalia does not live here, she lives with her husband
 12 . . . address unknown.” (Doc. 36 at 2–3; Doc. 36-1 at 4.) UniCredit conducted another
 13 Arizona Corporation Commission search and discovered on September 19, 2023, two days
 14 before UniCredit filed the complaint, Zummit reported Luna Contreras’s address and its
 15 own as one on North 48th Avenue in Phoenix. (Doc. 36 at 3.) But when a process server
 16 attempted service there less than a month later, an individual in the office reported “[t]here
 17 is no one here by this name” and “[s]ubject is not known.” (Doc. 36-1 at 16.)

18 After unsuccessful attempts to serve IyAC, Luna Contreras, and Peredo in
 19 September and October 2023 and again in December 2023 after filing its amended
 20 complaint, UniCredit moved for alternative service arguing its “efforts were thwarted,
 21 likely intentionally.” (Doc. 36 at 3–4; Doc. 36-1 at 4–5, 15–16.) The court granted that
 22 motion and allowed service by certified mail. (Doc. 40 at 2.)

23 **1. Luna Contreras and Peredo**

24 Luna Contreras and Peredo argue they were improperly served because they are
 25 Mexican citizens and do not reside at any of the addresses where UniCredit attempted to
 26 serve them. (Doc. 54 at 7, 9.) They argue that as Mexican residents, they “cannot be served
 27 within Arizona.” (Doc. 54 at 7, 9 (citing *In re Est. of Norman*, No. 1 CA-CV 22-0244, 2022
 28 WL 17588231 (Ariz. Ct. App. Dec. 13, 2022)).) But unlike in *Norman*, public records

1 indicated that Luna Contreras and Peredo potentially resided at one of three Arizona
2 addresses. *Cf. Norman*, 2022 WL 17588231, at *1, *4 (reversing superior court’s grant of
3 alternative service in Arizona where there was no evidence defendant resided in Arizona).
4 And although Luna Contreras and Peredo provided affidavits with their motion to dismiss
5 averring they are not residents of Arizona, Zummit’s 2023 Annual Report filed with the
6 Arizona Corporation Commission on September 19, 2023, listed a specific address for
7 Luna Contreras on North 48th Avenue in Phoenix. (Doc. 36 at 3; Doc. 54-1 at 3.) Notably,
8 Luna Contreras and Peredo never say they were not Arizona residents during the months
9 UniCredit was attempting service, nor that they have never lived or resided at the Scottsdale
10 and Paradise Valley addresses. (Doc. 54-1 at 3; Doc. 54-3 at 3.) Instead, they claim to *now*
11 “live full time in Mexico,” “visit” their family in Arizona twice per year, “stay in Arizona
12 for approximately twenty days each visit,” and not “have [any] other personal contacts with
13 Arizona[.]” (Doc. 54-1 at 3; Doc. 54-3 at 3.) Their failure to say whether this was true
14 during UniCredit’s monthslong attempts at service is fatal to their argument.

15 Luna Contreras and Peredo also argue UniCredit should have attempted to serve
16 them at their address in Mexico because it is identified on IyAC’s filings with the Mexican
17 commercial registry. (Doc. 54 at 7.) But Arizona Rule 4.1(k) authorizes alternative means
18 of service within Arizona when ordinary means are “impracticable.” Ariz. R.
19 Civ. P. 4.1(k)(1). The impracticable standard “does not mean impossible, but rather that
20 service would be extremely difficult or inconvenient.” *Bank of N.Y. Mellon v. Dodev*, 433
21 P.3d 549, 558 (Ariz. Ct. App. 2018). Luna Contreras provides IyAC’s filings with the
22 Mexican commercial registry appearing to list her address from 2005 and 2020. (Doc. 54-
23 2 at 14, 42.) But Luna Contreras and Peredo’s affidavits avow that they currently reside at
24 a different Mexican address and do not argue they ever lived at the address identified in
25 IyAC’s filings. (Doc. 54-1 at 3; Doc. 54-3 at 3.) UniCredit is not required to attempt
26 service at every possible previous known address before seeking alternative service.

27 Alternative service “must be reasonably calculated under all the circumstances[] to
28 apprise the interested parties of the pendency of the action and afford them an opportunity

to present their objections.” *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016–17 (9th Cir. 2002). UniCredit’s certified mail service, authorized by this court’s order, meets this standard. (Doc. 40 at 3; Ariz. R. Civ. P. 4.1(k)(1).) Luna Contreras listed Zummit’s last known address as her own with the Arizona Corporation Commission just two days before UniCredit filed its complaint. (Doc. 26 at 3.) It is reasonable to expect that Luna Contreras and her husband could be served at that address when she publicly associated herself with it mere months earlier. And indeed, Luna Contreras and Peredo have been apprised of UniCredit’s complaint and given the opportunity to respond, as evidenced by their motion to dismiss and declarations. (Doc. 54, Doc. 54-1 at 3; Doc. 54-3 at 3.)

2. IyAC

IyAC argues that the Hague Convention only allows UniCredit to serve it through the Mexican Central Authority. (Doc. 55 at 5 (citing *Cardona v. Kreamer*, 235 P.3d 1026, 1029 (Ariz. 2010)).) UniCredit’s failure to do so, IyAC alleges, renders its service ineffective.

The Hague Convention does not apply when a defendant’s address is not known. *Cardona*, 235 P.3d. at 1028. UniCredit alleged in its complaint that its Mexican counsel went to IyAC’s address and found that it “had vacated its facility, leaving no forwarding address.” (Doc. 29 at 5.) IyAC’s argument that UniCredit was required to first attempt service through the Mexican Central Authority fails because here, too, Arizona Rule 4.1(k) authorizes alternative means of service within Arizona when ordinary means are “impracticable.” Ariz. R. Civ. P. 4.1(k)(1).

Alternative service on IyAC was “reasonably calculated under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Rio Props.*, 284 F.3d at 1016–17 (9th Cir. 2002). UniCredit served IyAC by certified mail in accordance with Arizona Rule 4.1(k)(2) at an address where its 99% shareholder and general manager held herself out as President and as an agent for service of process for another business (and was her last known address). (Doc. 40 at 3.) It is reasonable that IyAC would be apprised of this suit by serving it at the

1 same addresses where Luna Contreras was served. And IyAC has actually been apprised
 2 of this suit as demonstrated by its motion to dismiss. (Doc. 55.) Additional service would
 3 only cause unnecessary delay given Luna Contreras and IyAC's knowledge of this suit.
 4 *WAM USA Inc. v. Fierros*, No. CV-23-00448-PHX-ROS, 2023 WL 6690648, at *1 (D.
 5 Ariz. Oct. 12, 2023). Accordingly, Luna Contreras and IyAC's motions to dismiss for
 6 improper service are denied.

7 **B. Personal Jurisdiction**

8 IyAC, Luna Contreras, and Peredo moved to dismiss for lack of personal
 9 jurisdiction. *See* Fed. R. Civ. P. 12(b)(2). In opposing a defendant's motion to dismiss for
 10 lack of personal jurisdiction, it is the plaintiff's burden to establish that jurisdiction is
 11 proper. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). A
 12 plaintiff need only make a prima facie showing of jurisdictional facts where the motion is
 13 based on written materials and "uncontroverted allegations in the complaint must be taken
 14 as true," but a plaintiff cannot "simply rest on the bare allegations of its complaint."
 15 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal
 16 citations omitted). Although conflicts between statements contained in affidavits are
 17 resolved in the plaintiff's favor, "disputed allegations in the complaint that are not
 18 supported with evidence or affidavits cannot establish jurisdiction." *AMA Multimedia, LLC*
 19 *v. Wanat*, 970 F.3d 1201, 1207 (9th Cir. 2020). IyAC's motion is denied and Luna
 20 Contreras and Peredo's motion is granted.

21 **1. IyAC**

22 UniCredit argues the court has general and specific personal jurisdiction over IyAC
 23 because it has such jurisdiction over Zummit and Zummit is IyAC's alter ego. "[T]he alter
 24 ego test may be used to extend personal jurisdiction to a foreign parent *or* subsidiary when,
 25 in actuality, the foreign entity is not really separate from its domestic affiliate." *Ranza v.*
 26 *Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015). When the alter-ego test is satisfied, the
 27 court may impute an alter ego's contacts to the ostensibly separate entity. *Chorost v. Rotor*
 28 *Am. Inc.*, No. CV-21-00235-TUC-RCC (LCK), 2022 WL 17361299, at *5 (D. Ariz. Aug.

1 8, 2022).

2 Analyzing first personal jurisdiction over Zummit, the court is permitted to exercise
 3 general jurisdiction over a nonresident if “the defendant’s activities in the state are
 4 ‘substantial’ or ‘continuous and systematic.’” *Est. of Studnek v. Ambassador of Glob.*
 5 *Missions UN Ltd.*, No. 04-0595-PHX-MHM, 2006 WL 3328595, at *2 (D. Ariz. Nov. 9,
 6 2006), *aff’d sub nom. Est. of Studnek ex rel. Studnek v. Williams*, 312 F. App’x 18 (9th Cir.
 7 2008). This presence can be shown by “mak[ing] sales, solicit[ing] or engag[ing] in
 8 business in the state, serv[ing] the state’s markets, designat[ing] an agent for service of
 9 process, hold[ing] a license, or [being] incorporated there.” *Monje v. Spin Master Inc.*,
 10 No. CV-09-1713-PHX-GMS, 2013 WL 2390625, at *7 (D. Ariz. May 30, 2013).

11 Although Zummit is a “Nevada corporation,” it is incorporated in Arizona.²
 12 (Doc. 29 at 3; Doc. 66-1 at 11.) It maintains an office in Arizona; is registered to do
 13 business in Arizona; designates a statutory agent with an Arizona address; reports all of its
 14 officers as having Arizona addresses; obtained a real estate facility in Arizona to fulfill the
 15 terms of the Joint Venture Agreement; intended to produce \$30 million pounds of plastic
 16 in Arizona for IyAC to sell to Empaques; and planned to take 70% of the profit from the
 17 Arizona plastic manufacturing. (Doc. 29 at 12–13; Doc. 66-1 at 2, 4, 11.) These facts are
 18 sufficiently substantial to exercise general jurisdiction over Zummit and IyAC, assuming
 19 there are sufficient alter-ego allegations between the two.

20 A parent company can be held liable for the acts of its subsidiary if plaintiff shows
 21 (1) “unity of control” between parent and subsidiary and (2) that “observance of the
 22 corporate form would sanction a fraud or promote injustice.” *Gatecliff v. Great Republic*
 23 *Life Ins. Co.*, 821 P.2d 725, 728 (Ariz. 1991). Unity of control can be demonstrated by “(1)
 24 under-capitalization; (2) failure to maintain a separate corporate identity; (3) diversion of
 25 corporate property for personal use; (4) lack of corporate formalities; and (5) failure to

26 ² As with the other parties, Zummit’s bankruptcy stay does not automatically extend to
 27 alter egos of the debtor. *Klinkenborg*, 690 F. App’x at 541. A bankruptcy court may choose
 28 to extend the stay to a debtor’s alter ego only after “‘hearing and the establishment of
 unusual need to take this action to protect the administration of the bankruptcy estate.’” *Id.*
 (quoting *Solidus Networks, Inc. v. Excel Innovations, Inc.*, 502 F.3d 1086, 1096 (9th Cir.
 2007)).

1 maintain books and records of account in reasonable order.” *In re Keesling*, No. 2-10-BK-
2 00433-CGC, 2012 WL 5868883, at *2 (D. Ariz. Nov. 19, 2012). Arizona courts have also
3 credited a showing of “stock ownership by the parent; common officers or directors;
4 financing of subsidiary by the parent” and “payment of salaries and other expenses of
5 subsidiary by the parent.” *Gatecliff*, 821 P.2d at 728. Parties alleging alter-ego liability do
6 not need to meet all of these factors. *Allen v. Am. Cap. Ltd.*, 287 F. Supp. 3d 763, 809
7 (D. Ariz. 2017). Fraud can be found where “incorporation is for fraudulent purposes or
8 where, after organization, the corporation is employed for fraudulent purposes.” *Keesling*,
9 2012 WL 5868883, at *4.

10 UniCredit has alleged facts sufficient to plead a plausible basis to conclude IyAC
11 and Zummit are alter egos. The amended complaint alleges that Zummit and IyAC
12 commingle their assets because they operate the same plastic manufacturing business from
13 the same location in Arizona using equipment IyAC purchased on Zummit’s behalf.
14 (Doc. 29 at 27.) IyAC is undercapitalized, having transferred “substantially all of its assets,
15 business, and going concern value” to Zummit and “bec[oming] insolvent as a result.”
16 (Doc. 29 at 27, 31.) They similarly fail to maintain a separate corporate identity because
17 Zummit “benefits from the skills, knowledge, workforce, market contacts, assets, and
18 customer relationships of IyAC’s ownership and management” and are both controlled by
19 Peredo Luna (Zummit’s Vice President of Operations, IyAC’s General Manager, and
20 holder of general power of attorney during the Credit Agreement negotiations), and Luna
21 Contreras (Zummit’s President and Director and IyAC’s General Manager and controlling
22 shareholder). (Doc. 29 at 2, 7, 27.)

23 UniCredit has also alleged sufficient facts to meet the fraud prong. “A fraud or
24 injustice arises if observance of the corporate form would confuse the opposing parties and
25 frustrate their efforts to protect their rights, while allowing the party responsible to evade
26 liability.” *Keg Restaurants Arizona, Inc. v. Jones*, 375 P.3d 1173, 1184 (Ariz. Ct. App.
27 2016). In particular, “a fraud may be perpetrated by the giving of a promise to perform a
28 future act made with the present intention not to perform.” *Id.* Here, UniCredit has alleged

1 facts showing that observance of the corporate form would allow the parties to evade
 2 liability. After UniCredit obtained the arbitration award, IyAC vacated its Mexico facility
 3 without leaving a forwarding address. (Doc. 29 at 5–6.) UniCredit later discovered IyAC
 4 and Zummit operated from the same location in Arizona. (Doc. 29 at 27.) And UniCredit
 5 alleged Peredo Luna “has a long history of defrauding creditors using a similar ‘shell
 6 game[,]’” supporting its allegations with citations to three other similar transactions.
 7 (Doc. 29 at 18–21.) These facts are sufficient to meet the fraud prong. *Gatecliff*, 821 P.2d
 8 at 729 (holding fraud prong satisfied where plaintiff could not “protect their rights before
 9 suit” and defendant could “evade liability after suit”).

10 The court has general jurisdiction over Zummit and there are sufficient alter-ego
 11 allegations to allow for Zummit’s contacts to be attributed to IyAC.

12 **2. Luna Contreras and Peredo**

13 UniCredit argues Luna Contreras and Peredo are subject to this court’s general
 14 personal jurisdiction because they and Peredo Luna are also alter egos of IyAC and
 15 Zummit. (Doc. 66 at 7.) If there were sufficient factual allegations establishing an alter-
 16 ego relationship here, UniCredit would be correct. But between these parties, there are not.

17 Although UniCredit has met the second prong for the reasons described above, it
 18 has not shown—as it must—how “there is such unity of interest and ownership that the
 19 separate personalities of the corporation and owners cease to exist.” *Keesling*, 2012 WL
 20 5868883, at *2. UniCredit described how IyAC failed to observe corporate formalities, for
 21 instance, allowing Peredo Luna to enter the Credit Agreement on behalf of IyAC even
 22 without holding its power of attorney. (Doc. 29 at 7.) But UniCredit has not alleged facts
 23 supporting the other factors, such as intermingling or diversion of corporate property for
 24 personal use. *Keesling*, 2012 WL 5868883, at *2. UniCredit emphasizes that Peredo Luna
 25 and Luna Contreras were IyAC’s controlling officers, but acting as a company’s sole
 26 shareholders, officers, and directors is insufficient to find alter ego when the other factors
 27 have not been shown. *Honeywell, Inc. v. Arnold Const. Co.*, 654 P.2d 301, 307
 28 (Ariz. Ct. App. 1982); *see also Marlyn Nutraceuticals, Inc. v. Improvita Health Prod.*, 663

1 F. Supp. 2d 841, 846 (D. Ariz. 2009) (“[C]orporate directors are not personally liable for
 2 torts committed by the corporation or by one of its officers merely by virtue of the office
 3 they hold.”). And UniCredit alleges no facts even suggesting Peredo is IyAC’s alter ego.

4 UniCredit also argues Luna Contreras and Peredo are subject to specific personal
 5 jurisdiction. The court applies the law of the state in which it sits when, as here, there is no
 6 applicable federal statute governing personal jurisdiction. *Martinez v. Aero Caribbean*, 764
 7 F.3d 1062, 1066 (9th Cir. 2014). Arizona law permits courts to exercise personal
 8 jurisdiction over a nonresident defendant to the maximum extent permitted under the due
 9 process clause of the United States Constitution. *Arizona Sch. Risk Retention Tr., Inc. v.*
 10 *NMTC, Inc.*, 169 F. Supp. 3d 931, 935 (D. Ariz. 2016). Exercise of jurisdiction over a non-
 11 resident comports with due process if that individual has “certain minimum contacts” with
 12 the relevant forum such that maintaining the suit “does not offend ‘traditional notions of
 13 fair play and substantial justice.’” *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quoting *Int’l*
 14 *Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

15 To determine whether there are “minimum contacts,” UniCredit must show, among
 16 other factors, that Luna Contreras and Peredo purposefully availed themselves of the
 17 privilege of doing business in the forum or purposefully directed their activities at the
 18 forum. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199,
 19 1206 (9th Cir. 2006). The purposeful direction test in turn requires a defendant to have “(1)
 20 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that
 21 the defendant knows is likely to be suffered in the forum state.” *Id.* “‘Intent’ in the context
 22 of the ‘intentional act’ test refer[s] to an intent to perform an actual physical act in the real
 23 world, rather than an intent to accomplish a result or consequence of that act.”
 24 *Schwarzenegger*, 374 F.3d at 806. And an “‘act’ denotes an external manifestation of the
 25 actor’s will.” *Id.*

26 UniCredit cites a number of allegations in support of its argument but few
 27 specifically relate to Luna Contreras and none relate to Peredo. (Doc. 66 at 10–11.) And
 28 even if Luna Contreras’s alleged knowing misrepresentation that IyAC owned 100% of

1 Zummit and signature to that effect on the organization charts meets prong one's
 2 intentional act test, UniCredit fails to meet prong two. Specifically, UniCredit alleges Luna
 3 Contreras's actions were expressly aimed at Arizona because she acted to procure the SML
 4 Equipment for Zummit's use in Arizona and the effects of her actions were "felt" in
 5 Arizona. (Doc. 66 at 11.) But the cases UniCredit cites involve situations where the
 6 defendant's actions were expressly aimed at a plaintiff in the forum state where *the plaintiff*
 7 allegedly felt harm. *See Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082 (9th
 8 Cir. 2000) (defendant's actions to defraud California plaintiff aimed at California); *Metro.*
 9 *Life Ins. Co. v. Neaves*, 912 F.2d 1062 (9th Cir. 1990) (same). Here, "[a]ny economic harm
 10 suffered by [UniCredit] would have been suffered where [UniCredit] lives," *i.e.*, in Austria.
 11 *See Al-Rajhi v. Mayfair Holdings, LLP*, No. 2:18-CV-0581-HRH, 2018 WL 3926439, at
 12 *4 (D. Ariz. Aug. 16, 2018).

13 UniCredit also argues Luna Contreras aimed her activities at Arizona to procure the
 14 SML Equipment as General Manager and controlling shareholder of IyAC and the
 15 President and Director of Zummit. But besides identifying her roles, UniCredit does not
 16 explain what actions Luna Contreras took. *Marlyn Nutraceuticals*, 663 F. Supp. 2d at 849
 17 ("[A] person's mere association with a corporation that causes injury in the forum state is
 18 not sufficient in itself to permit that forum to assert jurisdiction over the person.").

19 Accordingly, the court does not have specific jurisdiction over Luna Contreras and
 20 Peredo as currently alleged. UniCredit asks the court for jurisdictional discovery over these
 21 defendants. (Doc. 66 at 18.) "[D]iscovery should ordinarily be granted where pertinent
 22 facts bearing on the question of jurisdiction are controverted or where a more satisfactory
 23 showing of the facts is necessary." *Laub v. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir.
 24 2003). Here, UniCredit has alleged that Luna Contreras and Peredo visit and own a home
 25 in Arizona and Luna Contreras was the President, Director, and registered corporate agent
 26 of Zummit, which operates in Arizona. (Doc. 66 at 18.) Although Luna Contreras and
 27 Peredo have submitted affidavits stating they are not currently Arizona residents, the full
 28 scope of their contacts with the state during the relevant period is unclear. Accordingly,

jurisdictional discovery is appropriate here and UniCredit's request is granted.

C. Subject Matter Jurisdiction

A Rule 12(b)(1) motion like IyAC's here "allows litigants to seek the dismissal of an action from federal court for lack of subject matter jurisdiction." *Kinlichee v. United States*, 929 F. Supp. 2d 951, 954 (D. Ariz. 2013) (quoting *Tosco Corp. v. Comtys. for a Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001)). "When the motion to dismiss attacks the allegations of the complaint as insufficient to confer subject matter jurisdiction, all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." *Renteria v. United States*, 452 F. Supp. 2d 910, 919 (D. Ariz. 2006). "A plaintiff has the burden of proving that jurisdiction does in fact exist." *Id.*

9 U.S.C. § 203 grants the court original jurisdiction over "action[s] or proceeding[s] falling under" the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), as here (*see* Doc. 29 at 21). 9 U.S.C. § 203. Under the Ninth Circuit's admittedly broad reading of this statute, federal courts have original jurisdiction over an action or proceeding if (1) "there is an underlying arbitration that falls under the Convention," and (2) "the action or proceeding relates to that arbitration agreement or award." *Day v. Orrick, Herrington & Sutcliffe, LLP*, 42 F.4th 1131, 1138 (9th Cir. 2022). An action "relates to" an arbitration proceeding when the arbitration "could conceivably affect the outcome of the plaintiff's case." *Id.* (quoting *Infutura Global Ltd. v. Sequus Pharms., Inc.*, 631 F.3d 1133, 1138 (9th Cir. 2011)). And although these standards are broad, they are "not limitless." *See Cerner Middle E. Ltd. v. Belbadi Enterprises LLC*, 939 F.3d 1009, 1016 (9th Cir. 2019).

As a party to the arbitration proceeding, IyAC argues the court does not have subject matter jurisdiction only because it does not have personal jurisdiction. (Doc. 55 at 6.) It otherwise concedes this court's jurisdiction to hear the count requesting confirmation of that award. Because the court does have personal jurisdiction over IyAC and accordingly subject matter jurisdiction over the arbitration count, the key question is therefore whether

1 the court has subject matter jurisdiction over the non-arbitration claims.

2 **D. Supplemental Jurisdiction**

3 UniCredit asks the court to exercise supplemental jurisdiction over its fraud and
4 fraudulent transfer claims. (Doc. 51 at 9.) A court may exercise jurisdiction over all other
5 claims “that are so related to claims in the action within such original jurisdiction that they
6 form part of the same case or controversy” but may decline to exercise such jurisdiction if
7 “the claim substantially predominates over the claim or claims over which the district court
8 has original jurisdiction.” 28 U.S.C. §§ 1367(a), (c). A claim does not “substantially
9 predominate[]” over another if it “share[s] a common nucleus of operative facts.” *Mincy v.*
10 *Staff Leasing, L.P.*, 100 F. Supp. 2d 1050, 1053 (D. Ariz. 2000).

11 UniCredit argues its fraud claims “arise out of the same transaction, involve the
12 same parties, and arise from the same project” as the arbitration award. (Doc. 51 at 10.)
13 The court agrees. UniCredit’s fraud claims arise out of the Credit Agreement, the
14 performance and alleged failure of the parties to perform under the Credit Agreement, and
15 disputes regarding the Zummit plastics equipment. The parties’ arbitration claims arise out
16 of these same facts. (Doc. 1 at 64, 110.) And even if, as defendants argue, an arbitration
17 confirmation “is intended to be a ‘summary proceeding’” that does not “involve complex
18 factual determinations[,]” (Doc. 58 at 4 (quoting *Castro v. Tri Marine Fish Co. LLC*, 921
19 F.3d 766 (9th Cir. 2019)), that does not preclude the claims from arising out of a common
20 factual nucleus. Accordingly, the court exercises its supplemental jurisdiction over
21 UniCredit’s state law claims and must address whether they are sufficiently pleaded.

22 **III. Failure to State a Claim**

23 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
24 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
25 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
26 (internal citations omitted)). This is not a “probability requirement,” but a requirement that
27 the factual allegations show “more than a sheer possibility that a defendant has acted
28 unlawfully.” *Id.* A claim is facially plausible “when the plaintiff pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “[D]etermining whether a complaint states a plausible claim is context specific, requiring the reviewing court to draw on its experience and common sense.” *Id.* at 663–64.

A. Fraud

UniCredit alleges one non-stayed count of common law fraud against IyAC, Peredo Luna, and Luna Contreras. The complaint identifies six false statements or omissions as the basis for this count: (1) IyAC was “the 100% owner of Zummit”; (2) the financial statements of Inmobiliaria y Arrendadora Grupo were those of IyAC; (3) IyAC was not subject to “two pending litigation claims . . . for a large amount of money,” “certain mortgages,” and “contingent liabilities of \$5 million and \$30 million” “encumber[ed] IyAC property” (4) IyAC had not entered any material contracts that required disclosure, specifically the JVA with Zummit and the PPA with Empaques; (5) IyAC intended to repay financing from UniCredit; and (6) the arbitration claims brought against UniCredit were for the purpose of “obtaining the demanded ‘damages’” rather than “for the purpose of defrauding” UniCredit. (Doc. 29 at 10, 22–24, 26–27.) UniCredit alleges these misrepresentations or omissions induced it to enter into the Credit Agreement and issue Facility A. (Doc. 29 at 22.)

Defendants argue the fraud claim is barred by the statute of limitations and inadequately pleaded. (Doc. 37 at 7.) Although the claim may not be barred by the statute of limitations, it is not adequately pleaded.

1. Statute of Limitations

The statute of limitations period for fraud is three years and begins to run once a plaintiff has “knowledge of facts sufficient to make a reasonably prudent person suspicious of fraud, thus putting him on inquiry.” *Orbis Glob. Equity Fund Ltd. v. NortonLifelock Inc.*, No. CV-21-01995-PHX-JJT, 2023 WL 1800963, at *8 (D. Ariz. Feb. 7, 2023) (quoting *Coronado Dev. Corp. v. Superior Ct.*, 678 P.2d 535, 537 (Ariz. Ct. App. 1984)). UniCredit filed its initial complaint on September 21, 2023. (Doc. 1.) Defendants argue UniCredit

1 should have discovered the alleged fraud earlier because several of the statements at issue
 2 were publicly available before 2019 and UniCredit learned of others that year when the
 3 arbitration was filed. (Doc. 37 at 7–8, 10, 12.) UniCredit responds that it reasonably trusted
 4 the misrepresentations both because banks “assume a basic level of honesty” and because
 5 the falsity of certain statements could only be appreciated in context after it attempted to
 6 serve the arbitration award on an empty facility in June 2021. (Doc. 51 at 11–12.)

7 Neither side provides any case law to support when a party in UniCredit’s position
 8 should have reasonably become suspicious of fraud. But “[g]enerally, the timeliness of a
 9 claim depends on matters outside the pleadings and is not ‘amenable to resolution on a
 10 Rule 12(b)(6) motion.’” *Alger Dynamic Opportunities Fund v. Acadia Pharms. Inc.*, No.
 11 24-CV-451-WQH-MSB, 2024 WL 4647297, at *18 (S.D. Cal. Oct. 31, 2024) (quoting
 12 *Hernandez v. City of El Monte*, 138 F.3d 393, 402 (9th Cir. 1998)). Accordingly, a
 13 defendant seeking dismissal based on an affirmative statute-of-limitations defense must
 14 show “it is ‘beyond doubt’ that the plaintiff can prove no set of facts that would establish
 15 the timeliness of his or her claims.” *Orbis*, No. CV-21-01995-PHX-JJT, 2023 WL
 16 1800963, at *3 (D. Ariz. Feb. 7, 2023) (quoting *Hernandez*, 138 F.3d at 402).

17 Defendants have not met this standard. UniCredit has alleged facts showing at least
 18 three banks lent comparable sums to Peredo Luna or entities he controlled that later went
 19 bankrupt or disappeared without providing recovery. (Doc. 29 at 19–21.) They have not
 20 explained why UniCredit’s diligence regarding IyAC and Zummit’s financial statements
 21 fell below what was expected from a comparable bank in its position.

22 **2. Adequacy of Pleading**

23 To state a claim for common law fraud, the complaint must allege “with particularity
 24 the circumstances constituting fraud.” Fed. R. Civ. P. 9(b); *see also Vess v. Ciba-Geigy*
 25 *Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003) (noting “Rule 9(b)’s particularity
 26 requirement applies to state-law causes of action”). Under this standard, UniCredit must
 27 identify the “who, what, when, where, and how of the misconduct charged.” *Id.* at 1106.
 28 In Arizona, this requires that UniCredit plead the nine elements of fraud: “(1) a

representation; (2) its falsity; (3) its materiality;” the speaker’s (4) knowledge of its falsity; (5) intent that it be acted upon as it was reasonably expected; the hearer’s (6) ignorance of its falsity; (7) reliance on its truth; (8) right to rely on it; and (9) consequent and proximate injury. *Comerica Bank v. Mahmoodi*, 229 P.3d 1031, 1033–34 (Ariz. Ct. App. 2010). “[F]ailure to [plead] any one of [these elements] is fatal to the cause of action.” *Tavilla v. Cephalon, Inc.*, 870 F. Supp. 2d 759 (D. Ariz. 2012) (*Fridenmaker v. Valley Nat. Bank of Arizona*, 534 P.2d 1064, 1068 (Ariz. App. Ct. 1975)).

Defendants argue UniCredit improperly relies on group pleading, failing to differentiate each defendant’s alleged participation in the fraud. (Doc. 37 at 8.) The court agrees. Although a complaint need not identify each defendant’s false statements, “Rule 9(b) does not allow a complaint to merely lump multiple defendants together,” and instead “require[s] plaintiffs to differentiate their allegations when suing more than one defendant . . . [to] inform each defendant separately of the allegations surrounding his alleged participation in the fraud.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007).

Each of UniCredit’s allegations suffers from this same grouping problem. For instance, UniCredit argues defendants misrepresented “that IyAC was the 100% owner of Zummit when, in fact, IyAC was not the 100% owner of Zummit,” in part by transmitting “organization charts (at least five in total) to [UniCredit] showing that ‘Inmobiliaria y Arrendadora Grupo’ . . . was the 100% owner of Zummit.” (Doc. 29 at 22.) UniCredit’s only specific allegations are as to the individual defendants: that Peredo Luna “provided” it with an organizational chart showing IyAG as the owner of Zummit and falsely replied IyAG was the “dba” for IyAC when UniCredit when asked; and that Luna Contreras signed and dated the organizational chart. (Doc. 29 at 8–9.) In another example, UniCredit claims defendants fraudulently concealed the existence of the JVA and the PPA because doing so “would have deterred Plaintiff from entering the Credit Agreement.” (Doc. 29 at 24–25.) But UniCredit again relies on group pleading without explaining the roles of each defendant, and does not allege any defendant’s knowledge of or duty to disclose the existence of the JVA and PPA, or whether any defendant “intentionally prevented Plaintiff

1 from acquiring information about the JVA and PPA.” (Doc. 37 at 11.) In short, UniCredit
2 has not pleaded each defendant’s participation in the fraud with the required particularity.

3 Group pleading aside, UniCredit’s fraud allegations suffer from additional
4 deficiencies. In general, “[t]hreadbare recitals of the elements of a cause of action,
5 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (2009).
6 This standard required UniCredit to plead in its complaint—rather than ultimately
7 explaining in a footnote in its response to a motion to dismiss (Doc. 51 at 14 n.2)—why
8 Zummit’s ownership was material to it. Similarly, UniCredit failed to allege the “who,
9 what, when, where, and how of the misconduct charged” as it relates to IyAC’s 2015, 2016
10 and 2017 financial statements, *see Vess*, 317 F.3d at 1106, including when the statements
11 were transmitted, the identity of the relevant mortgages and pending litigation claims, and
12 in what way the financial statements understated expenses and liabilities while overstating
13 profit and book value. UniCredit also fails to allege any facts showing why these omissions
14 were material and that they were made with the intent to induce UniCredit into entering
15 the Credit Agreement, instead relying on conclusory statements in support. (Doc. 29 at 23.)

16 Unicredit’s allegations concerning the concealment of the JVA and PPA, the
17 conspiracy to defraud, and the bad-faith arbitration claim are similarly inadequate. As to
18 the JVA and PPA, UniCredit does not explain *why* any defendants were required to disclose
19 the JVA and PPA—especially where the PPA was finalized after the Credit Agreement.
20 (Doc. 29 at 12–13)—or alternatively that defendants intentionally prevented it from
21 acquiring material information as fraudulent concealment claims require. *Tavilla*, 870 F.
22 Supp. 2d at 774. And finally, as to the bad-faith arbitration claim, UniCredit fails to identify
23 which “underlying documents” IyAC relied on in starting the arbitration case, what
24 material misrepresentation is at issue, in what way UniCredit reasonably relied upon it, or
25 that defendants intended for UniCredit to rely on it. And although UniCredit alleges that it
26 was harmed by IyAC’s “merge[r] into Zummit” preventing it from recovering “on the
27 award except from the other Defendants in this case” (Doc. 51 at 16), it does not explain
28 how the underlying misrepresentation is proximately connected to its failure to recover.

1 In sum, UniCredit has not provided the requisite specific allegations to support its
2 fraud claim.³

3 **B. Fraudulent Transfer**

4 UniCredit claims Zummit, Peredo Luna, and Luna Contreras fraudulently
5 transferred IyAC's "assets, including but not limited to the SML equipment, to Zummit"
6 in violation of the Arizona Uniform Fraudulent Transfer Act. (Doc. 29 at 30.)

7 Claims brought under A.R.S. §§ 44-1004 and 44-1005 are subject to a four-year
8 statute of limitations period starting from the date "the transfer was made or the obligation
9 was incurred" or within one year after "the fraudulent nature of the transfer or obligation
10 was or through the exercise of reasonable diligence could have been discovered by the
11 claimant." A.R.S. § 44-1009.

12 The only transfer UniCredit identifies is that of the SML Equipment, which was
13 delivered to Zummit in 2018. (Doc. 29 at 5, 30.) And UniCredit argues that it first had
14 "reason to suspect that it might have been the victim of a fraud" in June 2021. (Doc. 29
15 at 18.) Accepting that UniCredit had reason to suspect fraud in June 2021, its fraudulent
16 transfer claim filed in September 2023 is nonetheless time-barred.

17 Accordingly,

18 **IT IS ORDERED** the Motions to Dismiss (Doc. 37, 54, 55) are **GRANTED IN**
19 **PART and DENIED IN PART**. Defendants Luna Contreras and Peredo are **DISMISSED**
20 **WITHOUT PREJUDICE**, the fraud claim is **DISMISSED WITH LEAVE TO**
21 **AMEND**, and the fraudulent transfer claim is **DISMISSED WITHOUT LEAVE TO**
22 **AMEND**.

23 **IT IS FURTHER ORDERED** Unicredit is permitted to take jurisdictional
24 discovery. All jurisdictional discovery must be completed within 45 days of this order.

25 /

26 /

27
28 ³ UniCredit also alleges a conspiracy (Doc. 29 at 26) but it is not clear why it did so. To the extent the alleged conspiracy involves the same misrepresentations discussed above, these statements are inadequately pleaded for the same reasons.

